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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,686	03/21/2002	Antonius Emmerink	449122025100	4658
25227	7590	01/11/2006	EXAMINER	
MORRISON & FOERSTER LLP 1650 TYSONS BOULEVARD SUITE 300 MCLEAN, VA 22102				ABELSON, RONALD B
ART UNIT		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/088,686	EMMERINK ET AL.
	Examiner Ronald Abelson	Art Unit 2666

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 21 March 2002.  
 2a) This action is FINAL. 2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 9-19 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 9-19 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 21 March 2002 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. <u>1/4/06</u> .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>21 March 2002</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

***Drawings***

1. Figure 1 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

2. The disclosure is objected to because of the following reason: The description of figure 1 see pages 5-6 should be in Background of the Invention and not in the Detailed Description of the Preferred Embodiments section.

Appropriate correction is required.

***Claim Objections***

3. Claim 10 is objected to because of the following reason:  
the term "permanent communication element" is not defined in the specification and therefore the claim language is not clear to the examiner. Appropriate correction is required. The examiner interprets the phrase, "permanent communication element" as a ""permanent virtual circuit".

Claim 14 is objected to because of the following informalities: the term "permanent communications link" should be changed to "communications link" to conform to the language of independent claim 13. Appropriate correction is required.

***Double Patenting***

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground

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provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 13 and 16 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 9 of copending Application No. 10/088,088. Although the conflicting claims are not identical, they are not patentably distinct from each other because all the limitations of claims 13 and 16 are found in claim 9 of copending Application No. 10/088,088.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

6. Claims 14, 15, 17, 18, and 19 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 9 of copending Application No. 10/088,088 in view of Smith (US 6,222,823).

This is a provisional obviousness-type double patenting rejection.

Regarding claim 14, claim 9 of copending Application No. 10/088,088 is silent on the communications link is a permanent virtual connection.

Smith teaches permanent virtual connections (set up permanent virtual circuit during certain hours of the day, or during certain days of the week, col. 2 lines 10-12).

Regarding claims 15 and 17, although claim 9 of copending Application No. 10/088,088 teaches ATM, claim 9 is silent on the transport network is an ATM network.

Smith teaches the transport network is an ATM network (fig. 1, col. 1 lines 1-6).

Therefore it would have been obvious to one of ordinary skill in the art, to modify the system of the combination of Gardner and AAPA by setting up the transport network as an ATM network and making connections through the ATM network as permanent virtual connections during certain time periods. This modification can be performed by adhering to standards regarding ATM and permanent virtual paths / circuits. This modification would benefit the system by allowing for the flexibility of setting up permanent virtual connections during time periods where high traffic volume is known to occur.

Regarding claims 18 and 19, the limitations are found in claim 9 of copending Application No. 10/088,088.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 13, 15, 16, and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Smith (US 6,222,823).

Smith teaches a transport network to provide a communications link (fig. 1 see connection between end-stations 14, public network, ATM, col. 5 lines 1-2).

Smith teaches a control network (fig. 1 see connections between CAC and DBC boxes 18 and 20 and switches boxes 12) to

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control the setting up and/or clearing of the communications link (fig. 1 box 18, 20, connection admission control function, dynamic bandwidth controller, col. 5 lines 6-9). The examiner corresponds the applicant's setting up the communication connection with the connection admission control function and dynamic bandwidth of the reference.

Smith teaches a first device to control the setting up and/or clearing of connections in the transport network via the control network (fig. 1 box 18), the device being arranged physically separately from the transport network (fig. 1: note the CAC is separate from the switches fig. 1 boxes 12).

Smith teaches the transport network has at least two decentralized switching devices (fig. 1 boxes 12) to provide a communications link in the transport network, with at least one communications link via the transport network between the decentralized switching devices (fig. 1: see links between switches in ATM network, col. 5 lines 1-2).

Regarding claim 15, the transport network is in the form of an ATM network (fig. 1, col. 5 lines 1-2).

Regarding claims 16 and 19, there are communications links between the decentralized switching devices (fig. 1: see links between switches in ATM network, col. 5 lines 1-2).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary.

Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Regarding claim 9 line 6, the phrase "setting up a communications link by using the call processing" shall be interpreted by the examiner as "setting up a communications link by using the transport-network specific call processing network" as stated by the applicant's representative Mr. Adam Keser (see attached interview).

10. Claims 9 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gardner (US 6,704,327) in view of applicant's admitted prior art 'AAPA'.

Regarding claim 9, Gardner teaches a method for setup up and clearing a communications link (fig. 6 box 202, connections 618, 620, col. 15 lines 15-23).

Gardner teaches producing control information in a central control device, which control information defines a link (fig. 6 box 202, signaling processor transports a control message, the control message designates a first connection, col. 15 lines 15-23).

Gardner teaches PCM data paths (fig. 6 paths 608, 612, col. 15 lines 35-39).

Gardner teaches controlling transport-network specific call processing, using the control information in a transport network for transporting communications data via the communication link (fig. 6 connections 618, 620, designates the connection, col. 15 lines 15-23).

Gardner teaches setting up a communications link by using the call processing and at least one connection element (fig. 6 box 204, transports call signaling via the cross connect, col. 15 lines 11-14) which is set up in the transport network (fig. 6, call signaling may be transmitted in-band, col. 14 lines 13-17, col. 14 lines 62-67, signaling processor transports a

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control message, the control message designates a first connection, col. 15 lines 15-23).

Although Gardner teaches a central device and PCM, the reference is silent on producing control information in a central device that defines a link via a switching matrix for time slot links for PCM data paths.

AAPA teaches producing control information in a central control device that defines a link via a switching matrix (fig. 1 box CP, pg. 6 lines 1-9) for time slot links for PCM data paths (time slots in a PCM datastream, pg. 5 lines 9-11).

Therefore it would have been obvious to one of ordinary skill in the art, to modify the system of Gardner by incorporating within the signaling processor (fig. 6 box 202) the logic to produce control information that defines a link via a switching matrix for time slot links for PCM data paths. This modification can be performed according to the teachings of AAPA. The suggestion for the modification is control may be carried out in a single unit in the communications network (AAPA: pg. 6 lines 9-12). This modification would allow the system to be easily integrated in existing ATM systems that transport PCM data.

Note, the limitations of claim 9 with respect to fig. 6 of Gardner are also found with respect to fig. 5 of Gardner.

Regarding claim 12, the communications link is set up via an ATM transport network (Gardner: fig. 5 box 502, fig. 6, call signaling may be transmitted in-band, col. 14 lines 13-17, ATM system, col. 14 lines 4-8).

11. Claims 10 and 11 rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Gardner and AAPA as applied to claim 9 above, and further in view of Smith.

Regarding claim 10, in addition to the limitations previously addressed, the combination teaches call processing is performed by decentralized switching devices in the transport network (Gardner: fig. 5 ATM System, col. 4 lines 4-8). Note, the examiner maintains ATM switching devices exist within the ATM System.

The combination is silent on the communications link is (set up via a permanent connection element) / (permanent virtual circuit) between two decentralized switching devices.

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Smith teaches permanent virtual connections (set up permanent virtual circuit during certain hours of the day, or during certain days of the week, col. 2 lines 10-12).

Regarding claim 11, the combination is silent on the communication links are set up via at least one permanent virtual connection.

Smith teaches permanent virtual connections (set up permanent virtual circuit during certain hours of the day, or during certain days of the week, col. 2 lines 10-12).

Therefore it would have been obvious to one of ordinary skill in the art, to modify the system of the combination of Gardner and AAPA by setting up the connections through the ATM network as permanent virtual connections during certain time periods. This modification can be performed by adhering to standards regarding permanent virtual paths / circuits. This modification would benefit the system by allowing for the flexibility of setting up permanent virtual connections during time periods where high traffic volume is known to occur.

12. Claims 14, 17, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (fig. 1) as applied to claim 13 above, and further in view of Smith.

Regarding claim 14, although Smith (fig. 1) teaches the communications links are virtual connections (col. 5 lines 34-35), fig. 1 is silent on the communications links are permanent virtual connections.

Smith teaches permanent virtual connections (set up permanent virtual circuit during certain hours of the day, or during certain days of the week, col. 2 lines 10-12).

Therefore it would have been obvious to one of ordinary skill in the art, to modify the system of Smith (fig. 1) by setting up the virtual paths / virtual circuits through the ATM network as permanent virtual connections during certain time periods. This modification can be performed by adhering to standards regarding permanent virtual paths / circuits. This modification would benefit the system by allowing for the flexibility of setting up permanent virtual connections during time periods where high traffic volume is known to occur.

Regarding claim 17, the transport network is in the form of an ATM network (fig. 1, col. 5 lines 1-2).

Regarding claims 18, there are communications links between the decentralized switching devices (fig. 1: see links between switches in ATM network, col. 5 lines 1-2).

**Conclusion**

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ronald Abelson whose telephone number is (571) 272-3165. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seema Rao can be reached on (571) 272-3174. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Ra*  
Ronald Abelson  
Examiner  
Art Unit 2666

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*Ron Abelson*